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REMARKS

In the specification, the paragraph beginning on Page 6 at Line 15 has been replaced to address Examiner's objection to the inconsistent terms used for item label 92 and to change the reference to an incorporated application from an attorney docket number to an Application Serial Number.

Claims 1-20 were pending and all stand rejected. Applicants have amended Claims 1, 2, 12, 17 and 20 and added new Claims 21-25. Applicant respectfully submit that Claims 1-25 are now allowable.

Claim Rejection – 35 U.S.C. §§ 102 and 103

Examiner has rejected claims 1, 2, 7-12 and 16-20 under 35 U.S.C. § 102(b) as being anticipated by *Suddaby* (U.S. Pat. No. 6,332,895). Applicants respectfully submit that these claims are not anticipated by the *Suddaby* '895 patent.

Independent Claim 1, includes, among other things, the features that the external and internal engagement surfaces are configured to engage one another to lock the implant in an expanded configuration "against a compressive force applied to the internal and external members along a direction opposite the direction of expansion" and that the external and internal engagement surfaces are arranged in a non-perpendicular orientation relative to the direction of implant expansion. The *Suddaby* '895 patent does not disclose these features. Examiner has taken the position that the engagement surfaces of the interlocking teeth structures are arranged in a non-perpendicular orientation relative to the first wall of the external and internal members. It appears that the examiner may have been referring to the sloped back sides of the locking teeth. To more clearly point out that the "engagement surfaces" in the present application are meant to refer to those surfaces that engage to resist the compression force on the implant. Applicants have amended claim 1 to added the qualifier quoted above. Thus, as amended, Claim 1 is not anticipated by the *Suddaby* '895 patent.

Independent Claims 2 and 20 have been similarly amended as Claim 1 and therefore are not anticipated by the *Suddaby* '895 patent.

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Independent claim 12 requires, among other things, that the first configuration of teeth being raked in an upwardly direction and that the second configuration of teeth being raked in a downwardly direction. The *Suddaby* '895 patent does not disclose these features. The *Suddaby* '895 patent discloses only ratcheting teeth with engagement surfaces that are perpendicular to the direction of expansion, and not raked either upwardly or downwardly. Claim 12 is thus not anticipated by the *Suddaby* '895 patent.

Independent claim 17 requires, among other things, that interlocking structure formed on the first and second members is configured to flex the walls of the second member toward the walls of the first member when compressive forces are applied to the base portions of the first and second members. As discussed above, the *Suddaby* '895 patent discloses only ratcheting teeth with engagement surfaces that are perpendicular to the direction of expansion. Such a structure is not configured to flex the walls of the second member toward the walls of the first member when compressive forces are applied to the base portions of the first and second members. Claim 17 is thus not anticipated by the *Suddaby* '895 patent.

Each of claims 7-11, 16 and 13-19, being ultimately dependent on one of the independent claims, contains all element of the base claim, and therefore is also not anticipated by the *Suddaby* '895 patent.

Claims 2 and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Suddaby* (U.S. Pat. No. 6,159,244). Applicant respectfully submit that Claims 2 and 6 are not anticipated by the *Suddaby* '244 patent.

As discussed above, Independent Claim 2 has been amended to more clearly point out that the "engagement surfaces" in the present application are meant to refer to those surfaces that engage to resist the compression force on the implant. Claim 2, includes, among other things, the features that the engagement surfaces are configured to engage one another to lock the implant in an expanded configuration "against a compressive force applied to the internal and external members along a direction opposite the direction of expansion" and that the engagement surfaces are arranged in a non-perpendicular orientation relative to the direction of implant expansion. The *Suddaby* '244 patent does not disclose these features. Like the *Suddaby* '895 patent, the *Suadaby* '244 patent discloses only ratcheting teeth with

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engagement surfaces that are perpendicular to the direction of expansion. Claim 2 is thus not anticipated by the *Suddaby* '244 patent. Claim 6, which depend on Claim 1, includes all limitations of Claim 1 and is therefore also not anticipated by the *Suddaby* '244 patent.

Claims 1, 2, 6-12 and 16-20 have been rejected under 35 U.S.C. § 102(e) as being anticipated by *Gerbac* (U.S. Pat. No. 6,648,917). Applicant respectfully submit that these claims are not anticipated by *Gerbac*.

Each independent claim, and thus every claim, in the present application requires, among other things, that at least one of the internal and external members comprise a flexible portion. *Gerbac* does not disclose this feature. *Gerbac* discloses flexible interlocking teeth, but not a flexible portion in any end portions. *Gerbac* thus does not anticipate any claim of the present application.

Claims 3-5 and 13-15 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the *Suddaby* '895 patent. Stating that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, Examiner asserts that the range of raking angles recited in these claims would have been obvious in light the *Suddaby* '895 patent. However, because the *Suddaby* '895 patent does not disclose any engagement surfaces that are non-perpendicular to the direction of expansion, the "general conditions" of the claims are not disclosed in the *Suddaby* '895 patent. Claims 3-5 and 13-15 are therefore not obvious in light of the *Suddaby* '895 patent.

New Claims

Claims 21-25 have been added, each ultimately depending on Claim 1, which is believed to be allowable as amended. Claim 21-25 are therefore believed to be allowable for at least the same reasons that Claim 1 is allowable.

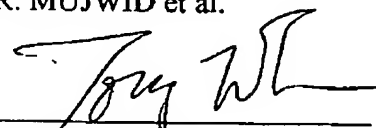
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Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully Submitted,

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Dated: July 1, 2005

M2:20723152.01